IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2463 of 2006
To
FIRST APPEAL No.2478 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
PADMABA GHANSHYAMSINH CHUDASMA & ORS. - Respondents

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Appearance :

First Appeal Nos.2463 to 2467 of 2006
MS KRINA P CALLA, AGP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

First Appeal Nos.2468 to 2472 of 2006
MS TANUJA N KACHCHHI, AGP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

First Appeal Nos.2473 to 2478 of 2006
MR KRUNAL D PANDYA, AGP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/12/2006

COMMON RAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

The above-numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated 19.04.2005 rendered by the learned Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.960 of 1998 to 975 of 1998 whereby the claimants have been awarded additional compensation at the rate of Rs.27.60 paise per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.0.40 paise per square metre by his award dated 22.02.1996, for their acquired lands.

2. A proposal was received by the State Government from the Executive Engineer, Narmada Yojana, Saurashtra Branch Canal, Division No.2/4, Bhavnagar, to acquire the lands of Village: Kharad, Taluka: Dhandhuka, District: Ahmedabad, for the

public purpose of construction of Narmada Canal. On consideration of the said proposal, the State Government was satisfied that the lands specified in the said proposal were likely to be needed for the said purpose and, therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on 03.06.1993. The land-owners whose lands were proposed to be acquired were thereafter served with notices under Section 4 of the Act. They filed their objections against the proposed acquisition. Thereafter, a report was forwarded by the Special Land Acquisition Officer to the State Government as envisaged by Section 5-A(2) of the Act. On scrutiny of the said report, the State Government, being satisfied, that the lands of Village: Kharad, as specified in notification under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal, issued a declaration under Section 6 of the Act, which was published in the official gazette on 28.04.1994. The interested persons were thereafter issued with notices under Section 9 of the Act to appear before the Special Land Acquisition Officer for

determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per square metre. However, having regard to the material placed before him, the Special Land Acquisition Officer, by his award dated 22.02.1996, offered compensation to the claimants at the rate of Rs.0.40 paise per square metre. Being aggrieved by the offer of compensation made by the Special Land Acquisition Officer which the claimants found to be totally inadequate, they submitted applications requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural), which were numbered as Land Acquisition Case Nos.960 of 1998 to 975 of 1998.

3. On behalf of the claimants, witness Mr.Sajjansinh Bhurubha Chudasma was examined at Exhibit 30. In his deposition, he stated that the acquired lands were fertile and were having adequate

irrigation facility and that the claimants were growing different crops in a year and earning a net agricultural income of about Rs.60,000/- per *vigha* per year from the sale of agricultural produces. This witness further deposed that the boundary of Village: Kharad was adjoining to Village: Kothadia and that the Narmada Canal was entering Village: Kharad from Village: Kothadia and proceeding towards Village: Jinzar. He further stated that the lands of Village: Kothadia, which were acquired earlier for the public purpose of construction of Narmada Canal, and the lands which were the subject matter of the present acquisition, were similar in all respects as far as quality and fertility was concerned. This witness produced copies of Village Form No.7/12 at Exhibits 15 to 27; copy of map of District Inspector of Land Records at Exhibit 28; copy of the previous judgment and award of the Reference Court pertaining to the lands of Village: Jinzar at Exhibit 29; and copy of previous judgment and award of the Reference Court relating to the lands of Village: Kothadia at Exhibit 33, in support of his claim for enhanced compensation. This witness was subjected to a lengthy

cross-examination by the opposing counsel, but nothing fruitful could be elicited from him to dislodge the statements he made in his examination-in-chief. In spite of sufficient opportunity, the appellant herein did not lead any oral or documentary evidence before the Reference Court.

4. On appreciation of the evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Kothadia was a good piece of evidence and very relevant for the purpose of determining the market value of the lands acquired in the instant case. It was noticed by the Reference Court that previously, the lands of Village: Kothadia were acquired for the same purpose wherein the notification under Section 4(1) of the Act was published in the official gazette on 03.06.1993, which is the same date on which the notification under Section 4(1) of the Act was published in the instant case. The Reference Court held that it was established by evidence on record that the previously acquired lands of Village: Kothadia and the lands,

which are the subject matter of the present acquisition, were similar in nature and were comparable in all respects and that Village: Kothadia was adjoining to Village: Kharad. The Reference Court further found that in Land Acquisition Case Nos.2599 of 1996 to 2606 of 1996 and 976 of 1998, which is the judgment and award of the Reference Court pertaining to the lands of Village: Kothadia, the notification under Section 4(1) of the Act was published on 03.06.1993, and the Special Land Acquisition Officer by his award dated 09.04.1996 had offered Rs.0.60 paise per square metre as compensation for the acquired lands, but, on references being made, the compensation was enhanced to Rs.28/- per square metre in all. It was noticed that in the present case also, the notification under Section 4(1) of the Act was published in the official gazette on 03.06.1993, and the Special Land Acquisition Officer had awarded Rs.0.40 paise per square metre for the acquired lands. Therefore, the Reference Court, in the ultimate analysis, has come to the conclusion that the claimants are entitled to additional compensation at the rate of Rs.27.60 paise

per square metre by the impugned judgment and award, giving rise to the above-numbered appeals.

6. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.G.M.Amin, learned counsel for the original claimants, and has also perused the compilation of documents produced by him for the consideration of the Court.

7. On re-appreciation of the evidence and material produced before the Court, as well as on scrutiny of the oral and documentary evidence led by the claimants, it is evident that although Mr.Sajjansinh Bharubha Chudasma, who has deposed on behalf of the claimants, stated at length regarding the fertility, irrigation facilities and agricultural produces, which were grown on the acquired lands, and claimed that the claimants were earning a net agricultural income of Rs.60,000/- per *vigha* per year, no documentary evidence has been led to prove the assertion regarding the income. On the other hand, the enhanced compensation has not been claimed

on the basis of agricultural yield or sale instances, but reliance has been placed upon the previous judgment and award of adjoining Village: Kothadia. It is an undisputed position of law that the previous judgment and award pertaining to the lands of a village, furnishes good guidance and is a reliable piece of evidence to ascertain the market value of the lands acquired from an adjoining village if the lands are similar and comparable in all respects. Therefore, it cannot be said that the Reference Court has erred in placing reliance upon the previous award of the lands pertaining to Village: Kothadia.

8. The claimants have also produced another award at Exhibit 29 pertaining to the lands of Village: Jinzar. However, apart from placing the said award on the record of the case, the deposition of the witness for the claimants would reveal that nothing has been stated by him regarding the comparability of the lands of Village: Jinzar with those of Village: Kharad. There is no evidence on record to establish that the lands of Village: Kharad, which are acquired in the instant case, are

in any way comparable to the lands of Village: Jinzar. The previous judgment and award of Village: Jinzar, therefore, will have to be excluded from scrutiny for the above reason. It is also evident that the Reference Court has not placed reliance upon the previous judgment and award relating to the lands of Village: Jinzar and has rightly relied upon the award relating to the lands of Village: Kothadia at Exhibit 33 by which the claimants therein were awarded Rs.28/- per square metre in all as compensation for their acquired lands.

9. In the ultimate analysis, therefore, this Court finds that the correct findings of facts have been arrived at by the Reference Court to which the settled principles of law have been applied. The learned counsel for the appellant has not been able to point out any error in the impugned judgment and award of the Reference Court so as to warrant the interference of this Court. As a result of the above discussion, this Court finds that the appeals are devoid of merits and, therefore, deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra